

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TERESA FARRIS, et al.,

Plaintiffs,

v.

FRANKLIN COUNTY, et al.,

Defendants.

NO. 4:14-cv-05083-SAB

PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following Protective Order is hereby entered by the Court.

1. This order shall govern the use and disclosure of information and material designated in good faith by a party to this litigation, or by a third party from whom discovery is sought in this litigation, as being confidential, which is contained in: (a) any documents, written discovery response, or tangible evidence produced in this litigation by means of discovery or trial, and (b) any transcripts of depositions taken in this action. This order establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement or ruling on the confidentiality of any document.

As used herein, "Confidential Information" shall include health care record information or documents, and any information or documents from which the identity of a patient may be ascertained, including "Protected Health Information"

1 as defined in 45 CFR 160.103 and “Health Care Information” as defined in RCW
2 70.02.010. “Confidential Information” also includes “the records of a person
3 confined in a jail” under RCW 70.48.100(2).

4 When used in the Order, the word “documents” means all written, recorded
5 or graphic matter whatsoever, including, but not limited to, materials produced
6 pursuant to Fed. R. Civ. P. 34, by subpoena or by agreement, deposition transcripts
7 and exhibits, interrogatory answers, responses to requests for admission, and any
8 portion of any Court papers that quote from any of the foregoing.

9 2. The attorneys of record, and all others to whom any of such
10 designated Confidential Information and material is disclosed, are ordered to
11 maintain such designated Confidential Information and material in strict
12 confidence, are ordered not to disclose such designated Confidential Information
13 and material except in accordance with this order, and are ordered to use such
14 designated Confidential Information and material solely for this litigation. All
15 produced Confidential Information and material shall be carefully maintained in
16 secure facilities (such as law firm offices), and access to such Confidential
17 Information and material shall be permitted only to persons properly having access
18 thereto under the terms of this order.

19 3. Confidential Information or material (including any copies thereof,
20 notes made therefrom, and the information contained therein) may be disclosed
21 only to the following persons:

22 3.1 Authors, originators, or original recipients of the Confidential
23 Information or material.

24 3.2 The parties to this action, including any putative or current class
25 members.

26 3.3 Employees and officers of a party to this action, to the extent
27 that such officers and directors have a need to know the Confidential Information
28 for the conduct of this litigation.

1 3.4 The attorneys of record in this litigation and employees or
2 contract personnel retained by such attorneys' offices (such as secretaries, legal
3 assistants, and document copying, coding, or imaging services) to whom it is
4 necessary to disclose such information or material in furtherance of the prosecution
5 or defense of this action, and any mediator selected to mediate this matter.

6 3.5 The Court and its personnel, as necessary in support of motions,
7 pleadings and other court papers and proceedings.

8 3.6 Court reporters and their assistants, to the extent reasonably
9 necessary for reporting of depositions and hearings.

10 3.7 Non-party witnesses in a deposition, but only if consent is
11 obtained from opposing counsel or the party proposing to disclose the material first
12 provides the material to opposing counsel prior to providing Confidential
13 Information to the witness at the deposition. When Confidential Information is
14 shown to a non-party witness in a deposition, the deponent and the deponent's
15 counsel shall be provided a copy of this Protective Order, and shall be informed on
16 the record that they are bound by the terms of this Protective Order.

17 3.8 Experts retained by an attorney to whom disclosure may be
18 made pursuant to Paragraph 3.4, but only to the extent that the expert, prior to
19 receiving any Confidential Information or material, has received a copy of this
20 order and signed an agreement (in substantially the form presented in Exhibit A
21 hereto) evidencing his intent to be bound by its terms, including his agreement not
22 to divulge any Confidential Information or material to any other person, his
23 agreement not to use any Confidential Information or material for any purpose
24 other than this litigation, and his consent to the jurisdiction and contempt power of
25 this Court with respect to the enforcement of the order.

26 4. Confidential records shall be used solely for the purpose of
27 conducting the action entitled *Farris, et al. v. Franklin County, et al.*, Case No.
28 4:14-cv-05083-SAB, unless the person who is the subject of such confidential

1 material, or that person's legal guardian, if applicable, authorizes its use for any
2 particular purpose.

3 5. When the parties file pleadings, motions, affidavits, declarations,
4 deposition transcripts, briefs, or other documents with the Court that refer to
5 individuals covered by this Protective Order, the parties must ensure that the
6 individuals' names are not used and rather must replace each name with a
7 designated letter or letters. Absent circumstances not in the control of either party,
8 each individual covered by this Protective Order must be identified during
9 discovery, and the parties shall agree upon the unique assigned letter(s) designation
10 as soon as possible following identification of the individual and exchange of
11 confidential records. In the event a party files pleadings with the Court that refer
12 specifically to a person whose confidential information is the subject matter of this
13 Protective Order and whose identifying initials or letters have not yet been agreed
14 to, that party must notify opposing counsel as to the identity and corresponding
15 designated letter(s) contained in the pleadings.

16 6. Use of Confidential Information During Discovery:

17 Depositions. A party may designate as confidential the deposition transcript
18 and all exhibits to the deposition by indicating on the record at the deposition that
19 certain information is confidential and subject to the terms of this Protective Order.
20 Alternatively, the party may make a confidential designation by notifying all
21 parties in writing within twenty (20) days after the deposition transcript is received
22 by the party of the portions of the transcript and/or exhibits designated as
23 confidential. During this interim twenty (20) day period, the entire transcript and
24 the exhibits attached thereto shall be treated by all the parties as confidential. All
25 transcripts and deposition exhibits containing any confidential information shall be
26 marked: **"CONFIDENTIAL. Subject to restriction by a Protective Order."**

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1 Interrogatories and Requests for Production, and other discovery related
2 matters. Use of Confidential Information during discovery shall be designated as
3 follows:

4 (a) To designate a document as one containing Confidential
5 Information, the party producing the document, shall stamp the
6 first page and every page thereafter as follows:
7 **“CONFIDENTIAL. Subject to restriction by a Protective**
8 **Order.”**

9 (b) All confidential documents produced by the parties during
10 discovery shall be stamped as indicated in paragraph 6(a)
11 above.

12 (c) Any responses to interrogatories, requests for production, or
13 requests for admission, which are designated by a party as
14 containing Confidential Information, shall be submitted in a
15 separate document with each page stamped as indicated in
16 paragraph 6(a) above.

17 (d) If documents are produced on a computer disc, and all
18 documents on the disc contain confidential information, they
19 shall all be designated confidential by application to the disc of
20 a sticker bearing the language set out in paragraph 6(a). If any
21 of the documents are used at depositions or attached to
22 pleadings, each page of these documents shall be stamped as
23 indicated in paragraph 6(a).

24 7. A party may, subject to the rules of evidence and order of the Court,
25 use any Confidential Information for any purposes at trial or at any hearing before
26 a judicial officer in the above entitled action. Any Confidential Information used in
27 any court proceeding shall not lose its confidential status through such use, unless
28 the Court orders otherwise.

8. If use or disclosure of Confidential Information is authorized pursuant
to other law unrelated to this litigation, nothing in this Order shall be deemed to
restrict the use or disclosure of Confidential Information by any party or putative

1 class member of documents, information, or materials held by that party or
2 putative class member. The person who is the subject of such confidential material,
3 or that person's legal guardian, if applicable, may authorize that otherwise
4 confidential material may be treated as non-confidential information during this
5 litigation.

6 9. Any party may seek an order of the Court modifying this order, seek
7 greater or lesser protection for any information or material sought to be discovered,
8 or seek an order pursuant to Fed. Rule Civ. P. 26(c) or other applicable rule or law
9 that other Confidential Information not be revealed.

10 10. The disclosure by the producing party of Confidential Information or
11 material, regardless of whether the information was so designated at the time of
12 disclosure, shall not be deemed a waiver in whole or in part of a party's claim of
13 confidentiality with respect to third parties, either as to the specific information
14 disclosed or as to any other information relating thereto or on the same or related
15 subject matter. Nothing in this order shall be deemed to waive any claim of
16 privilege or of work product immunity.

17 11. Within thirty (30) days after the conclusion of the above entitled
18 action, including, without limitation, any appeal or retrial, all Confidential
19 Information, including copies, extracts, or summaries, shall be returned to counsel
20 who provided it, unless that person who is the subject of such confidential material
21 or that person's legal guardian, if any, directs that such materials be given to that
22 person's legal guardian instead of the producing party or upon consent of counsel
23 for the producing party. Alternatively, a party or counsel in possession of
24 documents containing confidential information shall certify in writing within the
25 30-day period that all such documents have been destroyed. As to those materials
26 which contain confidential information, but constitute or reflect counsel's work
27 product, all such work product and all copies shall either be destroyed or retained
28 by counsel in a secure place, subject to this Protective Order. Notwithstanding the

1 foregoing, counsel for each party may retain one copy of all documents related to
2 this litigation.

3 12. Should any confidential information be disclosed, through
4 inadvertence or otherwise, to any person not authorized to receive it under this
5 Protective Order, then the disclosing person(s) shall promptly: (a) identify the
6 recipient(s) and the circumstances of the unauthorized disclosure to the relevant
7 producing person(s); and (b) use best efforts to bind the recipients to the terms of
8 this Protective Order. No information shall lose its confidential status because of
9 its disclosure to a person not authorized to receive it under this Protective Order.

10 13. In the event that any Confidential Information or material is included
11 with any pleading, motion, deposition transcript, or other paper filed with the Clerk
12 of this Court, such information or material shall be submitted as an attachment and
13 the attachment shall be filed under seal and prominently marked with the words
14 **“CONFIDENTIAL INFORMATION – FILED UNDER SEAL.”**

15 14. The Clerk **shall seal** the following documents that have already been
16 filed in this action:
17 ECF Nos. 19-1; 19-2; 19-3; 19-4; 19-5; 19-6; 19-7; 19-8; 19-9; 19-10; and 19-11.

18 15. The parties may at any time stipulate to a modification of this order by
19 the Court as to any particular portion of the Confidential Information or material,
20 without affecting the continuing validity of this order as to any other Confidential
21 Information or material.

22 16. Upon conclusion of the above entitled action, the provisions of this
23 Protective Order shall continue to be binding.

24 17. This Protective Order shall remain in full force and effect until
25 modified, superseded, or terminated by consent of the parties or by Order of this
26 Court made upon reasonable written request.

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1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order, provide copies to counsel, and **seal** the documents indicated in
3 paragraph 14.

4 **DATED** this 12th day of January 2015.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

10 Stanley A. Bastian
11 United States District Judge
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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

The undersigned, _____, hereby acknowledges that he or she has received a copy of the Protective Order entered in *Farris, et al. v. Franklin County, et al.*, United States District Court for the Eastern District of Washington, Case No. 4:14-cv-05083-SAB, and has read and agrees to be bound by all of the provisions thereof. The undersigned agrees not to divulge any Confidential Information or material to any other person, and not to use any Confidential Information or material for any purpose other than this litigation. In addition, the undersigned consents to the jurisdiction and contempt power of this Court with respect to the enforcement of the order.

DATED this ____ day of _____, 20__.